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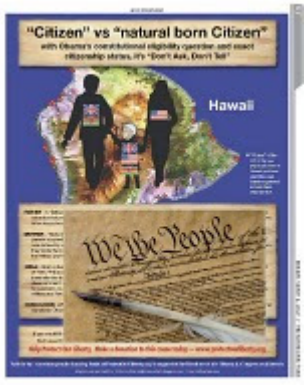
Obama - Maybe a Citizen of the United States but Not a "natural born Citizen" of the United States



The question which has gripped our Constitutional Republic is whether putative President, Barack Obama, is eligible to be President and Commander in Chief of the Military. Article II, Section 1, Clause 5 of our Constitution provides that: "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States." Despite the fact that Article II itself, and when read together with Articles I, III, IV and Amendments Eleven, Fourteen, Fifteen, Nineteen, Twenty-Four, and Twenty-Six, clearly makes a distinction between a "Citizen of the United States" and a "natural born Citizen," when it comes to deciding whether Obama is eligible to be President under Article II, many incorrectly interpret a "Citizen of the United States " to be the same thing as a "natural born Citizen." With these two clauses not having the same meaning, the proper eligibility question is not whether Obama is a "Citizen of the United States." Rather, the correct inquiry is whether Obama is a "natural born Citizen."

Most probably recognize that United States citizens are created either at birth or at the moment of naturalization. The former is a native (using that term in its modern sense and not in the sense that the Founders used it) and the latter is not. Most probably also recognize that a naturalized citizen is not eligible to be President. But what many fail to recognize is that the event of birth has two natural elements which always have and always will be present in every birth: (1) the place where one was born and (2) the two parents who procreated the child. Hence, some also fail to understand that there are two types of born citizens, one being a born "Citizen of the United States" and the other being a "natural born Citizen." Under current law, a born "Citizen of the United States" is one granted that status under the 14th Amendment or Congressional Act (e.g. Title 8 Section 1401), both of which consider either (1) being born on United States soil or

(2) being born to at least one United States citizen parent sufficient conditions for being granted the status of a born "Citizen of the United States." Never in our history has the United States Supreme Court or the Congress ever required that one needs to satisfy both of these conditions in order to be a “citizen of the United States.” But as to a “natural born Citizen,” we have a different story.

To understand what an Article II “natural born Citizen” is, we have to revert to the Founding era to determine what the Founders and Framers intended that clause to mean. In analyzing what meaning the Framer’s gave to the “natural born Citizen” clause, we must remember that they wrote the Constitution in the historical context of having won a Revolution and in having to constitute a new society. They were inspired by and found justification in the political philosophy of natural law and the law of nations and not that of the English common law in going forward with that Revolution and they relied on that same law when defining national citizenship. Article II, Section 1, Clause 5 of the Constitution grandfathered all persons to be eligible to be President who were “Citizens of the United States” at the time the Constitution was adopted. These persons would have been adults who were born in the colonies, children born in the new states, or adults inhabiting or naturalized under the naturalization laws in either place, at the time that the Constitution was adopted, provided they all adhered to the American Revolution. Justice Gray in United States v. Wong Kim Ark, 169 U.S. 649 (1898) explained that under English common law that prevailed in the colonies these original citizens included persons who were born in the colonies or new states to alien parents. These original citizens, whether born in the country or out of it, were all naturalized to be “citizens of the United States” by simply adhering to the American Revolution. The Founders in Article II grandfathered these “citizens of the United States” to be eligible to be President, provided that they were such at the time of the adoption of the Constitution which we know occurred on September 17, 1787. The grandfather clause is obsolete today.

The Founders themselves, being born prior to independence were subjects of the British Crown and to other foreign sovereigns but adhering to the American Revolution became part of the first “citizens of the United States.” All being born in the colonies before the Declaration of Independence was adopted in 1776 to British parents, the first seven Presidents were born subjects of Great Britain (born subject to a foreign power) and therefore needed the grandfather clause to make them eligible to be President. William Harrison, the ninth President, born in 1773 in Virginia, was the last President who could utilize the grandfather clause to make him eligible to be President. Justice Story observed in his Commentaries on the Constitution of the United States that for the Framers to allow naturalized citizens (who like them were born subject to a foreign power and as we shall see below not “natural born Citizens”) to be eligible to be President was an exception to “the great fundamental policy of all governments, to exclude foreign influence from their executive councils and duties.” III J. Story, Commentaries on the Constitution of the United States Sec. 1473 (1833). Being born on December 5, 1782, on United States soil (in New York and therefore not born on foreign soil) to parents who had also become “citizens of the United States” by election to be loyal to the American Revolution (not born to foreign parents), Martin Van Buren, the eighth President (his mother was of Dutch ancestry and his great-great-great-great-grandfather Cornelis had come to the New World in 1631 from the Netherlands) was the first United States President not born a British or other foreign subject (not subject to a foreign power by being born either on foreign soil or to a foreign parent) who was

born a “natural born Citizen” and who therefore did not need the grandfather clause to make him eligible to be President. The New Netherland Institute describes Van Buren’s family history as follows: “In fact, although they were fifth generation Dutch, all of their forebears were of Dutch extraction. The original Van Buren had come over in the 1640's during the Van Rensselaer era when all of Columbia County was part of the Rensselaer Estate. And the original immigrant forbear probably came over sponsored by Killian Van Rensselaer, among many other immigrants, to occupy the Rensselaer estate. As a result Martin Van Buren was pure Dutch, and still spoke Dutch, the language that prevailed for many generations in that part of New York State along the Hudson River.” http://www.nnp.org/nni/Publications/Dutch-American/buren.html. It has been said that Van Buren is the first President born under the American flag.

On the other hand, for children born after the adoption of the Constitution in 1787, the same Article II, Section 1, Clause 5 provides, among other things, that only a "natural born Citizen" is eligible to be President. An Article II "natural born Citizen" is one granted that special status under American common law that has its origins in natural law and the law of nations. With citizenship being a matter of status having international implications, the Framers would have expected its definition to be supplied by public law or the law of nations and not by any municipal or English common law, which the States continued to use to resolve their local problems concerning contracts, torts, property, inheritance, criminal procedure, etc. Under the law of nations, to be a "natural born Citizen," the child needed to be born in the United States (or what may be deemed its equivalent) to two citizen parents. This definition of a “natural born Citizen” is found in and has been confirmed by the following United States Supreme Court cases and other authorities:

1. Samuel von Pufendorf, The Whole Duty of Man According to the Laws of Nature (William Tooke trans., Ian Hunter & David Saunders, eds., Liberty Fund 2003, Book II, Chapter 6, xiii (1691): “Citizens are either Originally so; that is, such as are born in the Place, and upon that Account claim their Privileges; Or else, Adscititious; that is, such as come from Foreign Parts. Of the first Sort, are either those who at first were present and concerned in the forming of the said Society, or their Descendants, who we call Indigenes, or Natives. Of the other Sort are those who come from Foreign Parts in order to settle themselves there. As for those who come thither only to make a short Stay, although they are for that Time subject to the Laws of the Place; nevertheless, they are not looked upon as Citizens, but are called Strangers or Sojourners."

2. Emer de Vattel, The Law of Nations, or Principles of the Laws of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, bk. 1, c. 19, sec. 212 (original French in 1758 and first English in 1759): Vattel clearly distinguished between “citizens” (“citoyens” in French) and “naturals” (“naturels” in French). His title for Section 212 is “Des citoyens et naturels” (“Of citizens and naturals” which the English translators called "Of the citizens and natives"). He therefore saw that there is a difference between the two types of citizens. He then explained that difference: “The citizens are the members of the civil society: bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or indigenes, are those born in the country of parents who are citizens”. In the 1797 English edition, the translator replaced the word “indigenes” with “natural-born citizens.” Hence, it read: “The citizens are the members of the civil society: bound to this society by certain duties, and subject

to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens." Hence, while the definition of a natural born citizen never changed in Vattel's texts, the term to express it was changed from "indigenes" to "natural-born citizens."

With many of the Founders being proficient in Latin, Greek, and French, they probably obtained the clause "natural born citizen" and its synonym, "native," from ancient Latin text which was also translated into English rather than from simply copying the clause "natural born subject" from the English common law and substituting the word "citizen" for "subject." That ancient text was found in Institutio Oratoria, by Marcus Fabius Quintilianus (or Quintilian), published in Latin in the first century A.D. The Framers were well read in the Roman and Greek classics as is expounded upon in their writings in the Federalist Papers. Jefferson and other Founders had a love for Roman history and education. From the excellent research conducted by John Greschak, we learn the following: "In 1774, the phrase natural born citizen was used in an English translation (from the Latin) of the book Institutio Oratoria, by Marcus Fabius Quintilianus (published in the first century A.D.); this was done in Chapter I of Book VIII. The phrase is found in the Latin text: Quare, si fieri, potest et verba omnia et vox huius alumnum urbis oleant, ut oratio Romana plane videatur, non civitate donata. Quintilianus, Institutio Oratoria, Book 1, Chapter VIII. There have been at least five different English translations of this work and this sentence. The first was by Guthrie in 1756. Since then, there have been translations by Patsall (1774), Watson (1856), Butler (1920-2) and Russell (2001)." http://www.greschak.com/essays/natborn/index.htm. Greschak found that Guthrie in 1756 used the word "native" when translating Quintilianus' reference to that Roman citizen who because of birth and family upbringing was expected to be most able to speak the pure Roman language. In referring to the same type of citizen, Patsall in 1774 translated the same sentence as: "Therefore, if possible, every word and the very tone of voice, should bespeak the natural born citizen of Rome, that the language may be purely Roman, and not so by a right different from birth and education" (emphasis supplied). Greschak states: "I do not claim that this is the first use of the phrase natural born citizen, but it is the earliest use of which I am aware." Id. "Alumnum" means "nourished, brought up; reared/fostered by; native, brought up locally." (Latin-English Dictionary 1.97FC). "Urbis" means city. Parentage, education, and upbringing made an "alumnum urbis oleant." Just being born in the city was not sufficient to meet the definition of the phrase. It was both birth in the locality and parental and institutional rearing and education from birth that produced the "natural born citizen."

Hence, Quintilianus' work which was translated from the Latin to the English provided the clause "natural born citizen" and the word "native" and the translators used the words interchangeably to mean the same thing. This fluctuation in translation explains why the Founders, too, used the words "native" and "natural born Citizen" synonymously.

Quintilianus also provides an explanation of how the Framers translated Vattel by taking his French words of "Les naturels, ou indigenes" or the same words translated into English as "natives or indigenes" and translated or converted them into "natural born Citizen" which is what they wrote into Article II. Being able to read and understand the definitions that Vattel gave to the clause "Les naturels, ou indigenes" (in French) and "The natives or indigenes" (in English), they realized that Vattel's clauses as written in either French or English were the equivalent to

"native" or "natural born citizen" with which they were familiar from having found the clauses in ancient Latin text or its English translations that we saw above. The Founders would have been familiar with both "natural born citizen" and "native" from having seen the two expressions in these various English translations of the ancient Latin text. These English translations took the Latin clause "alumnum urbis oleant" and translated it into either "native" or "natural born citizen." Hence, it appears that the English translators believed that either "native" or "natural born citizen" captured the meaning of "alumnum urbis oleant." The Framers, applying their study and knowledge of natural law, would have equated Vattel's description of "Les naturals, ou indigenes" or "the natives or indigenes" found in Section 212, which was a citizen of true origin and therefore of the highest order with what Quintilanus called "alumnum orbis oleant," also considered by him to be a citizen of true Roman origin and of the highest order. In fact, during the constitutional debates the Framers also used both "natural born citizen" and "native" interchangeably, just as the English translators of the Latin term "alumnum orbis oleant" did. It would be highly coincidental that both the English translators of Quintilianus' Latin text and the Founders would have been using those two clauses interchangeably unless they were referring to the same concept, "alumnum orbis oleant." We know that the Framers chose "natural born Citizen" rather than "native." They then applied Vattel's definitions to the "natural born citizen" clause that they selected. It is also significant that the English translator of the 1797 English edition used "the natives, or natural-born citizens" in the place of "the natives, or indigenes." In making this change, this translator probably knew that the Founders used "natives" or "natural born Citizens" to represent the citizens of the highest order and whom Vattel called "Les naturels, ou indigenes," or what had been to date translated as "the natives, or indigenes."

3. Rutgers v. Waddington (1784): In 1784, Alexander Hamilton, as the lawyer for the defense, arguing in the case of Rutgers v. Waddington, quoted prolifically from Vattel's, The Law of Nations. The Waddington case shows how Vattel shaped Hamilton's thinking. Hamilton argued that the law of nations was part of the common law and that the decisions of the New York Legislature must be consistent with the law of nations. Hamilton used Vattel as the standard for defining the law of nations. Hamilton argued that state law was superseded by national law and the law of nations. He also argued that the intent of the state legislature had to be that their laws be applied in a fashion that was consistent with national law and the law of nations. Judge James Duane in his ruling described the importance of the new republic abiding by the law of nations, and explained that the standard for the court would be Vattel. He ruled that the New York statue passed under the color of English common law must be consistent with the law of nations. Hamilton espoused a concept of constitutional law which he obtained from the teachings of Vattel. It was Vattel that gave him the idea of the judicial branch of government making sure that both the legislative and executive branches follow the Constitution. It was Hamilton's views on Vattel that lead to the creation of judicial review which was included into the Constitution and which was later given prominence by Chief Justice John Marshall. It was Vattel's idea of what the purpose of government should be (promote commerce, revenue, agriculture, tranquility, happiness, stability, and strength) that Hamilton advocated to the convention delegates in 1787. Hence, there is no doubt that Vattel shaped the founding of the United States.

4. The Venus, 12 U.S. (8 Cranch) 253, 289 (1814): Chief Justice John Marshall, concurring and dissenting for other reasons, said: "Vattel, who, though not very full to this point, is more explicit and more satisfactory on it than any other whose work has fallen into my hands, says 'The

citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives or indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights.'"

5. Shanks v. Dupont, 28 U.S. 242, 245 (1830): "If she was not of age, then she might well be deemed under the circumstances of this case to hold the citizenship of her father, for children born in a country, continuing while under age in the family of the father, partake of his national character as a citizen of that country."

6. Dred Scott v. Sandford, 60 U.S. 393 (1857): Justice Daniel concurring, cited and quoted from Vattel and The Law of Nations thus: "'The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As society cannot perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their parents, and succeed to all their rights.' Again: 'I say, to be of the country, it is necessary to be born of a person who is a citizen; for if he be born there of a foreigner, it will be only the place of his birth, and not his country. . . .'" It should be noted that Justice Daniel took out of Vattel's definition the reference to "fathers" and "father" and replaced it with "parents" and "person," respectively. I have maintained that the Founders and Framers relied upon natural law and the law of nations rather than the English common law to define a "natural born Citizen." On the question of whether blacks were citizens, Justice Curtis in dissent looked to the law of nations to determine their status given that there was no other municipal law that had abrogated that law. He did not look to the English common law.

7. Rep. John Bingham, in the House on March 9, 1866, in commenting on the Civil Rights Act of 1866 which was the precursor to the Fourteenth Amendment: "[I] find no fault with the introductory clause [S 61 Bill], which is simply declaratory of what is written in the Constitution, that every human being born within the jurisdiction of the United States of parents not owing allegiance to any foreign sovereignty is, in the language of your Constitution itself, a natural born citizen. . . . " Cong. Globe, 39th, 1st Session, 1291 (1866).

8. Slaughter-House Cases, 83 U.S. 36, 21 L.Ed. 394, 16 Wall. 36 (1872): In explaining the meaning of the Fourteenth Amendment clause, "subject to the jurisdiction thereof," said in dicta that the clause "was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States."

9. Minor v. Happersett, 88 U.S. 162, 167-68 (1875): "The Constitution does not in words say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been

doubts, but never as to the first. For the purposes of this case, it is not necessary to solve these doubts. It is sufficient, for everything we have now to consider, that all children, born of citizen parents within the jurisdiction, are themselves citizens." Id., 169 U.S. at 679-80. Minor did not cite Vattel but as can be seen the Court's definition of a "citizen" and a "natural born Citizen" are taken directly out of Vattel's Section 212.

10. Ex parte Reynolds, 20 F.Cas. 582, 5 Dill. 394, No. 11,719 (C.C.W.D.Ark 1879): "[T]he offspring of free persons…follows the condition of the father, and the rule partus sequitur patrem prevails in determining their status. 1 Bouv. Inst., 198, § 502; 31 Barb. 486; 2 Bouv. Law Dict. 147; Shanks v. Dupont, 3 Pet. [28 U.S.] 242. This is the universal maxim of the common law with regard to freemen -- as old as the common law, or even as the Roman civil law… No other rules than the ones above enumerated ever did prevail in this or any other civilized country. In the case of Ludlam v. Ludlam, 31 Barb. 486, the court says: 'The universal maxim of [**17] the common law being partus sequitur patrem, it is sufficient for the application of this doctrine that the father should be a subject lawfully, and without breach of his allegiance beyond sea, no matter what may be the condition of the mother.' The law of nations, which becomes, when applicable to an existing condition of affairs in a country, a part of the common law of that country, declares the same rule. Vattel, in his Law of Nations (page 101), says: 'As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, these children naturally follow the condition of their fathers and succeed to their rights. * * * The country of the father is, therefore, that of the children, and these become true citizens merely by their tacit consent.' Again, on page 102, Vattel says: 'By the law of nature alone, children follow the condition of their fathers and enter into all their rights.' This law of nature, as far as it has become a part of the common law, in the absence of any positive enactment on the subject, must be the rule in this case."

11. Elk v. Wilkins, 112 U.S. 94 (1884): "The main object of the opening sentence of the fourteenth amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes, (Scott v. Sandford, 19 How. 393;) and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the state in which they reside. Slaughter-House Cases, 16 Wall. 36, 73; Strauder v. West Virginia, 100 U. S. 303, 306… [S]ubject to the jurisdiction thereof… is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance…. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized… Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes, (an alien though dependent power,) although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations…. To be a citizen of the United States is a political privilege which no one, not born to, can assume without its consent in some form."

12. United States v. Ward, 42 F.320 (C.C.S.D.Cal. 1890) (same definition and cites Vattel); “At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children, born in a country of parents who were its citizens, became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners.”

13. U.S. v. Wong Kim Ark, 169 U.S. 649 (1898): It quoted the same definition of “natural born Citizen” as did Minor v. Happersett. Hence, Wong did not change the definition of an Article II "natural born Citizen." It declared under the Fourteenth Amendment a child born on United States soil to alien parents who were domiciled and legally residing in the United States and therefore subject to the jurisdiction of the United States a “citizen of the United States,” It did not find him an Article II “natural born Citizen.” The Wong Kim Ark holding which relates to a Fourteenth Amendment born "citizen of the United States" cannot be relied upon to define an Article II “natural born Citizen.” Defining what an Article II “natural born Citizen” is depends upon what the Framers intended that clause to mean in 1787. The Framers defined national citizenship during the Founding in the historical context of the American Revolution, a context which did not exist in 1898. In that context, the Founders had to provide for who were the original citizens and who were their descendents. To define these terms, the Framers relied upon the same law that justified the Revolution itself. That law was natural law and the law of nations and not the English common law. From that law, they came to call the original citizens "citizens of the United States" and their descendents, the "natural born Citizens." The Framers then gave Congress the power to naturalize all other persons who may in the future also qualify to be “citizens of the United States.” Under natural law and the law of nations as commented upon by Vattel, whom the Framers relied upon to explain that law, this meant that only the children of citizens (either “natural born Citizens” or naturalized) could ever be “natural born Citizens.” All other citizens would only be “citizens of the United States.” Wong Kim Ark dealt with defining what a Fourteenth Amendment “citizen of the United States” was in 1898. Justice Gray's general statements in Wong Kim Ark as to what a "natural born subject" (which under English common law also included naturalized subjects) was in the colonies under English common law before the Revolution made by him for the purpose of defining a “citizen of the United States” in 1898 do not answer the question of what the Founder's definition of an Article II "natural born Citizen" was in 1787. In fact, given the Revolution and the need to constitute a new society, to the Framers the English common law was neither relevant nor useful in providing that definition. Justice Gray’s decision can at best be used to define what an original citizen was before the adoption of the Constitution which definition he used to justify his declaring Wong a Fourteenth Amendment born "citizen of the United States." But it cannot be used to define what a “natural born Citizen” is following its adoption. Additionally, the Wong court itself recognized the two distinct types of citizens, a "natural born Citizen" and a "citizen of the United States." Chief Justice Fuller in his dissent said that he would not have found Wong to be a “citizen of the United States” because his parents were not citizens. He also confirmed Vattel’s definition of a “natural born Citizen.”

The two citizen-parent requirement (not only just one parent) comes from the definition of a “natural born Citizen” referring to the child’s parents in the plural. It also comes from the common law that provided that a woman upon marriage took the citizenship of her husband. Both parents must also be citizens in order for the child not to be born subject to any foreign

power and therefore with any other conflicting allegiance or loyalty. Hence, given the Framers' use of the "natural born Citizen" clause, they required a would-be President to have both (1) birth on United States soil (or its equivalent) and (2) birth to two United States citizen parents as necessary conditions of being granted that special status. Given the necessary conditions that must be satisfied to be granted the status, all "natural born Citizens" are "Citizens of the United States" but not all "Citizens of the United States" are "natural born Citizens."

It is telling that of all the positions and offices the Framers provided for in the Constitution, only that of the President and Commander in Chief of the Military (and also the Vice President under the Twelfth Amendment) may be occupied only by a "natural born Citizen." They therefore believed that this singular and all-powerful office was more vulnerable to foreign influence than any other and they thereby sought to give it the most protection that they could. Minor said that there were doubts whether the children born in the United States to alien parents were "citizens." The Minor decision was decided in 1875 or 87 years after the Constitution was adopted and as Justice Waite explained in that decision our nation still had doubts on whether children born in the United States to alien parents were even citizens. If the Court had doubts about whether these children were "citizens," it surely had doubts whether they were "natural born Citizens." We cannot reasonably imagine that the Framers would have used a standard for a person to meet in order to be eligible to be President and Commander in Chief of the Military which would have created doubts as to its meaning and which would therefore have put at risk the security and integrity of that critically important office. Surely, they would have relied on a definition that created no doubt which Minor explained was one that included that both the child be born in the country (or its equivalent) to citizen parents. Indeed, as Minor explained, such a standard created no doubt. It was through the "natural born Citizen" clause that the Framers sought to accomplish the goal of protecting the Office of President and Commander in Chief of the Military from foreign influence and of providing a definition of national citizenship which the nation would have no difficulty to understand.

The categories of citizens that the Framers established in the Constitution is "natural born Citizen" and "citizen of the United States." With respect to citizenship, the Framers gave Congress only the power to "naturalize" persons to become "citizens of the United States." Hence, any person that is made a citizen by Congress that is not by the natural circumstances of his or her birth a "natural born Citizen" is necessarily a naturalized citizen and consequently a "citizen of the United States" but not a "natural born Citizen." Congress has also chosen to exercise its naturalization power over children born in the United States which constitutionally could have any effect only over a child who is not a "natural born Citizen." See 8 U.S.C. Sec. 1401(a) ("The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof;").

In Dred Scott v. Sandford, 60 U.S. 393 (1856), the United States Supreme Court said that slaves and their descendents, whether free or not, were not members of American society even though born on United States soil and unlike the American Indians subject to the jurisdiction thereof. Hence, the Court said that they were not "citizens of the United States.' To correct that ruling, Congress passed the Civil Rights Act of 1866. With this Act, Congress first declared what a "citizen of the United States" was. The Act declared citizens of the United States "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed." 14

Stat. 27; Rev. Stat. Sec. 1992. Hence, this Act removed from citizenship any factor related to color, race, or past condition of servitude. Because of the controversial nature of the Act, Congress saw fit to introduce and have passed a constitutional amendment which would protect what the Act sought to accomplish from the political whims of future Congresses and state governments. We know that this Act became the precursor to the Fourteenth Amendment which was passed in 1868.

In Strauder v. West Virginia, 100 U.S. 303, 310, 25 L.Ed. 664 (1879), in commenting upon what the purpose of the Fourteenth Amendment was, our U.S. Supreme Court said: "Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it. To quote further from 16 Wall., supra: 'In giving construction to any of these articles [amendments], it is necessary to keep the main purpose steadily in view.' 'It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.' "

The amendment was needed to remove any doubts regarding whether blacks could be United States citizens. But the amendment only allowed these slaves and their descendents to become a member of the United States community by making them United States citizens. The intent and purpose of the amendment was to provide equal citizenship to all Americans either born on United States soil or naturalized therein and subject to the jurisdiction thereof. It did not grant “natural born Citizen” status. The Amendment’s framers were familiar with how the Constitution in many places and the Naturalization Act of 1790 (used “natural born citizens”) and 1795 (changed the statute to read just “citizens of the United States”) distinguished between a “natural born citizen” and a “citizen of the United States.” If the Amendment were to grant “natural born Citizen” status, it would have told us that a born citizen thereunder was a “natural born Citizen” and not only a “citizen of the United States.” It also would not have equated a born citizen thereunder to a naturalized citizen, for a naturalized citizen is not eligible to be President. Hence, the Amendment only confers “citizen of the United States” status, as that is the exact clause used by the Amendment itself and that is the same clause that appears in Articles I, II, III, IV and Amendments Eleven, Fourteen, Fifteen, Nineteen, Twenty-Four, and Twenty-Six of the Constitution and in various Congressional Acts. It just conveys the status of “citizen of the United States,” and as we have also seen from how the First and Third Congresses handled the Naturalization Acts of 1790 and 1795, being a “citizen of the United States” does not necessarily mean that one is a “natural born Citizen.” Indeed, both Minor v. Happersett (1875) and U.S. v. Wong Kim Ark (1898) expressly told us that the meaning of a “natural born Citizen” is not found in the Fourteenth Amendment or any other part of the Constitution but rather in the common law. The Supreme Court decided these cases after we adopted the Fourteenth Amendment in 1868 and the Court in both cases was asked to decide if the subject person was a “citizen of the United States” under the Fourteenth Amendment.

The Fourteenth Amendment only tells us who may become members of the community called the United States, i.e., those born on U.S. soil or naturalized and subject to the jurisdiction thereof are U.S. citizens, “and nothing more.” Minor v. Happersett, 88 U.S. 162, 166, 22 L.Ed. 627, 21 Wall. 162 (1874). The Fourteenth Amendment gave the status of "citizen of the United States" to all those persons born in the United States or naturalized therein and "subject to the

jurisdiction thereof." As to born citizens, the Amendment was not needed to make anyone a "natural born Citizen," for that status was conferred upon a child by natural law and the law of nations. On the other hand, the Amendment was needed to clarify who may be a "citizen of the United States." Under the probable meaning of the Amendment, it simply removed race, color, and condition of servitude from the application of the natural law and law of nations definition of a "citizen" and a "natural born citizen." As the "subject to the jurisdiction thereof" clause is currently interpreted, which interpretation is questionable and highly debated, the Amendment went as far as to take Congress's power to "naturalize" a child born in the United States of parents who were not citizens (one parent or both not citizens or even legal residents) as expressed by it in the 1866 Act and constitutionalized the status of that child to a "citizen of the United States." Additionally, a Fourteenth Amendment born "citizen of the United States" does not need to go through any formal naturalization process as does a person wanting to be a "citizen of the United States" but who was not born a "citizen of the United States" under any Congressional Act. This more liberal rule can be better understood when we consider that Vattel informed that England was an exception to the general rule for being born a native or indigenes, in that in England the "single circumstance of being born in the country naturalises the children of a foreigner," Vattel, at Sec. 214.

What is important to understand when questioning Obama's eligibility to be President is that neither the Fourteenth Amendment nor any Congressional Act makes one a "natural born Citizen." Rather, what their provisions create is at a maximum a born or naturalized "citizen of the United States" who are equal under the law. They do not create a "natural born Citizen." Since the citizenship clause of the Fourteenth Amendment is supposed to mirror Congress's 1866 Act, the Amendment makes one a born citizen through the Constitution who under the 1866 Act would have been a born citizen by naturalization by Congress and by so doing it produced only a "citizen of the United States" and not a "natural born Citizen." Since Congress had neither the power nor intent to make anyone a "natural born Citizen" under the 1866 Act and the Amendment merely followed the path of that Act, the Fourteenth Amendment also would not have made anyone a "natural born Citizen." This interpretation is confirmed by Congressman John Bingham who implicitly distinguished between a "natural born Citizen" and a "citizen of the United States." Bingham confirmed the understanding and the construction the Fourteenth Amendment Framers used in regards to birthright and jurisdiction while speaking on the proposed civil rights act of 1866 that was being discussed in the House on March 9, 1866: "I find no fault with the introductory clause, which is simply declaratory of what is written in the Constitution, that every human being born within the jurisdiction of the United States of parents not owing allegiance to any foreign sovereignty is, in the language of your Constitution itself, a natural born citizen…."

To have the special status of "natural born Citizen," a child needs to necessarily satisfy the birth conditions of that special status, i.e., born in the country to two citizen parents. These are two factors that occur naturally and need no law to be so recognized. Because "natural born Citizen" status requires unity of citizenship and allegiance, conditions which descend naturally to the child at the time of birth from the two events of birth in the United States and birth to United States citizen parents, this status provides a would-be President with the greatest degree of loyalty and allegiance to the United States, a quality that the Framers expected all Presidents and Chief Military Commanders born after the adoption of the Constitution to have. It is this high

degree of loyalty and allegiance to the United States in a President and Military Commander in Chief of the Military that provides the nation and each of its citizens and residents with both the greatest confidence in the person holding that highest civil and military office and the greatest protection from enemies both foreign and domestic, or what John Jay in his letter of July 25, 1787, to then General Washington (copy of original) called "a strong check" on foreign influence invading our government. Wisdom shows that there is no sound national security or public policy reason why a Constitutional Republic such as the United States should demand anything less from a person who would aspire to the singular and all-powerful office of President and Commander in Chief of the Military.

Because Obama was born 173 years after the Constitution was adopted, he cannot take advantage of Article II's now obsolete grandfather clause which would have allowed him to be eligible to be President if he could conclusively prove that he was a "citizen of the United States" (by conclusively proving he was born in Hawaii). Since he cannot utilize the grandfather clause, he must conclusively prove he is a "natural born Citizen" to be eligible to be President. But Obama's birth circumstances show that, even if he were born in Hawaii as he claims, he cannot satisfy his constitutional obligation under Article II. Obama's father, being born in the then-British colony of Kenya, was under the British Nationality Act 1948 a British subject/citizen and not a United States Citizen when Obama was born in 1961. Being here only temporarily on a student visa, he was not domiciled or permanently residing in the United States. Obama himself in 1961 by descent from his father was also born a British subject/citizen under that same 1948 Act. If Obama was born in Hawaii (a fact which he has yet to conclusively prove by presenting a contemporaneous birth certificate created in 1961 when he was born and not a Certification of Live Birth created in 2007 and posted on the internet in 2008), which would make him a dual citizen from birth of the United States and Great Britain, he could qualify as a "Citizen of the United States" under a liberal and questionable interpretation of the Fourteenth Amendment. But because his father was not a United States citizen when Obama was born, he was born subject to a foreign power which he inherited from his father. Being born subject to a foreign power like a naturalized citizen, he is not an Article II "natural born Citizen" and therefore is not eligible to be President and Commander in Chief of the Military of the United States.

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